

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Michelle Renee Nielsen,

Plaintiff

V.

State Farm Mutual Automobile Insurance
Company,

Defendant

Case No.: 2:24-cv-00802-CDS-NJK

Order Granting Motion to Remand

[ECF No. 9]

10 This breach of contract action arises out of an underlying motor vehicle accident that
11 was removed from the Eighth Judicial District Court by defendant State Farm Mutual
12 Automobile Insurance Company under 28 U.S.C. §§ 1332, 1441, 1446. ECF No. 1. Plaintiff
13 Michelle Neilsen moves to remand this action back to state court, arguing that State Farm fails
14 to demonstrate an amount in controversy greater than \$75,000. ECF No. 9. State Farm opposes
15 the motion, arguing that Neilsen's prayer of \$50,000 policy limits for the breach of contract
16 claim, together with the prayer for punitive damages and attorney's fees, plausibly meets the
17 \$75,000 jurisdictional requirement. ECF No. 10. The motion for remand is fully briefed. ECF No.
18 15. For the reasons set forth herein, I grant Neilsen's motion to remand.

19 | I. Legal framework

20 “A motion to remand the case on the basis of any defect other than lack of subject matter
21 jurisdiction must be made within 30 days after the filing of the notice of removal under section
22 1446(a).” 28 U.S.C. § 1447(c). A suit may be removed from state court to federal court only if the
23 federal court would have had subject matter jurisdiction over the case. *See* 28 U.S.C. § 1441(a);
24 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could
25 have been filed in federal court may be removed to federal court by the defendant.”). To establish
26 subject matter jurisdiction pursuant to diversity of citizenship under § 1332(a), the party

1 asserting jurisdiction must show: (1) complete diversity of citizenship among opposing parties
 2 and (2) an amount in controversy exceeding \$75,000. 28 U.S.C. § 1332(a). The party seeking
 3 removal bears the burden of establishing federal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
 4 (9th Cir. 1992); *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 399 (9th Cir. 2010). “The removal
 5 statute is strictly construed, and any doubt about the right of removal requires resolution in
 6 favor of remand.” *Id.*; see also *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir.
 7 2009).

8 To determine the amount in controversy, courts first look to the complaint. Generally,
 9 “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *St. Paul
 10 Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938) (footnote omitted). The \$75,000
 11 threshold is satisfied if the plaintiff claims a sum greater than the jurisdictional requirement. *Id.*
 12 at 288–89; *Pachinger v. MGM Grand Hotel–Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986).
 13 However, when removal jurisdiction is challenged by the plaintiff, the burden lies with the
 14 defendant to show by a preponderance of the evidence that the amount in controversy
 15 requirement is satisfied. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)
 16 (“Evidence establishing the amount [in controversy] is required . . . only when the plaintiff
 17 contests, or the court questions, the defendant’s allegation.”). Evidence establishing the amount
 18 in controversy is required where a defendant’s assertion of the amount in controversy is
 19 contested by plaintiffs. *Id.* at 88. “In such a case, **both sides** submit proof and the court decides,
 20 by a preponderance of the evidence, whether the amount-in-controversy requirement has been
 21 satisfied.” *Id.* (citing 28 U.S.C. § 1446(c)(2)(B)) (emphasis added).

22 Before calculating the amount in controversy, the court must determine whether each
 23 measure of damages can be considered “summary-judgment-type evidence” that is plausible and
 24 “relevant to the amount in controversy at the time of removal.” *Singer v. State Farm Mut. Auto. Ins.
 25 Co.*, 116 F.3d 373, 377 (9th Cir. 1997). Removal is proper “if the district court finds, by a
 26

1 preponderance of the evidence, that the amount in controversy exceeds' the jurisdictional
2 threshold." *Dart Cherokee*, 574 U.S. at 88.

3 **II. Analysis**

4 Neilsen asserts that this action should be remanded to state court because defendants
5 cannot meet their burden establishing that the amount in controversy in this action exceeds
6 \$75,000. ECF No. 9 at 3. I agree. While the removal petition asserts that the amount in
7 controversy threshold requirement is met, that assertion is mere speculation based on
8 conclusory allegations that the attorney's fees sought by plaintiff "could be significant" and
9 punitive damages in other actions should be given "serious consideration" in calculating
10 whether the amount in controversy requirement is met. ECF No. 1 at 6-7. Counsel's assertion
11 that attorney's fees could be significant, or that punitive damages awarded in other actions
12 should be considered, does not constitute the sort of summary judgment like evidence the court
13 can consider in resolving this motion. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir.
14 2004) (noting that in determining the amount in controversy, courts examine not only the facts
15 alleged in the complaint—which are assumed true for purposes of calculating the amount in
16 controversy—but also "summary judgment type evidence relevant to the amount in controversy
17 at the time of removal").

18 As relevant here, in the complaint, Neilsen prays for: (1) general damages in excess of
19 \$15,000; (2) special damages to be determined at the time of trial; (3) consequential damages,
20 including attorney's fees; (4) expectation damages for denied policy benefits in excess of
21 \$15,000; (5) punitive damages in excess of \$15,000; (6) reasonable attorney's fees and costs of
22 suit; and (7) interest at the statutory rate. Compl., ECF No. 1-1 at 16. This prayer for relief makes
23 it facially unclear if the amount in controversy is greater than \$75,000. At best, aggregating the
24 prayer for general, expectation, and punitive damages, the face of the complaint shows that
25 Neilsen is seeking \$45,000 in relief. Even considering State Farm's argument that Neilsen is
26

1 seeking \$50,000 for the breach of contract claim,¹ that only brings the prayer for relief to
 2 \$65,000.² And State Farm's argument that this court should consider potential, significant
 3 punitive damages or attorney's fees is insufficient to demonstrate the \$75,000 threshold.
 4 Removal "cannot be based simply upon conclusory allegations." *Singer*, 116 F.3d at 377 (quoting
 5 *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)). And the term "significant" cannot
 6 serve as a replacement for the "summary-judgment-type evidence" required for this court to
 7 resolve motions for remand. *See Woolsey v. State Farm Gen. Ins. Co.*, 672 F. Supp. 3d 1018, 1025 (C.D.
 8 Cal. 2023).

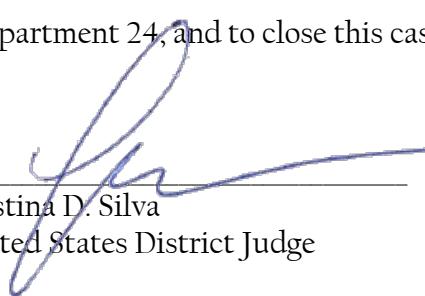
9 While Neilsen also failed to provide evidence regarding the amount in controversy, the
 10 burden lies with the defendant. State Farm should have, but failed to "prove, by a preponderance
 11 of the evidence, that the amount in controversy [satisfied] the jurisdictional threshold." *Matheson*
 12 *v. Progressive Specialty Ins. Co.*, 319 F.3d, 1089, 1090 (9th Cir. 2003); *see also Sanchez v. Monumental Life*
 13 *Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996). Consequently, I grant Neilsen's motion to remand
 14 this action to state court.

15 **III. Conclusion**

16 IT IS HEREBY ORDERED that Neilsen's motion to remand [ECF No. 9] is GRANTED.

17 The Clerk of Court is directed to REMAND this case to the Eighth Judicial District
 18 Court, Clark County, Nevada, Case No. A-24-888866-C, Department 24, and to close this case.

19 Dated: July 10, 2024

20 
 21 Cristina D. Silva
 22 United States District Judge

23

24 ¹ "Plaintiff asserts that she is entitled to payment of the full limits for insurance motorist coverage under
 25 her policy which amount[s] to \$50,000.00 per person." *See* ECF No. 10 at 4–5.

26 ² To arrive at this figure, the court substitutes the breach damages of \$50,000 for the prayers of an excess
 27 of \$15,000 for general damages and an excess of \$15,000 for expectation damages and adds to it the
 28 putative damages prayer of \$15,000.